Supreme Court, U.S.
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No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Petitioner demonstrated in its initial brief that Section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. § 185(a), does not permit federal courts to entertain suits seeking to invalidate collective bargaining agreements where no violation of those agreements is alleged. This conclusion is dictated by the plain language of the section, which confers federal jurisdiction only over "[s]uits for violation of contracts," and is confirmed by the section's legislative history, its purpose, and the overall structure of federal labor law. *See* Pet. Br. at 15-31. Petitioner's brief also demonstrated alternatively that, if there were federal jurisdiction over the respondent's claim, the claim would not survive *Garmon* preemption. *See id.* at 34-38.

Neither respondent (the "union") nor the United States as *amicus curiae* casts doubt upon these conclusions. While supporting the result reached by the Third Circuit, the government appears to agree with petitioner that suits seeking to invalidate collective bargaining agreements should not be permitted where "contractual issues [are] only tangentially involved." Gov. Br. at 26-27. The government fails, however, to offer any rational basis for distinguishing between the suits to invalidate labor contracts it would prohibit and those, such as this one, that it would permit. *See id.* at 27 n.20. Moreover, neither the government nor the union is able to reconcile its interpretation of Section 301(a) with the text of the section, its purpose and history, or federal labor policy. The opposing parties also fail to explain why the union's claim should be exempted from *Garmon* preemption.

1. Notably absent from the union's brief is any analysis of the language of Section 301(a). The union does not discuss that language or otherwise attempt to reconcile its interpretation with the text of the section. Instead, it derides petitioner's concentration on the language of the statute as a "simple minded approach." Resp. Br. at 15.

The union attempts to justify its approach by reference to this Court's decision in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). In *Lincoln Mills*, the union points out, this Court interpreted Section 301 to contain a mandate for formulating a federal

common law of labor contracts despite the lack of any textual direction to do so. *See* Resp. Br. at 16. *Lincoln Mills* was, however, a very different case. Because the text of Section 301(a) did not address the question of federal common law, this Court was required to consider matters beyond the language of the statute. Here, by contrast, the question concerns the scope of federal jurisdiction under Section 301(a), a matter explicitly addressed by the statutory language.

There is no inconsistency in finding the statutory language plain in this context and uncertain in *Lincoln Mills*. As this Court noted last year, the plain meaning rule applies not only to statutes whose meaning is clear in all contexts, but also to statutes that have a "plain and unambiguous meaning *with regard to the particular dispute in the case*." *Robinson v. Shell Oil Co.*, 117 S. Ct. 843, 846 (1997) (emphasis added). Accordingly, on several occasions since *Lincoln Mills*, this Court has interpreted Section 301(a) according to the plain meaning of its language. *See United Ass'n of Journeymen & Apprentices v. Local 334, United Ass'n of Journeyman & Apprentices*, 452 U.S. 615, 619-22 (1981); *Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17, 25-27 (1962). Quoting this Court's decision in *Smith v. Evening News Association*, 371 U.S. 195, 199 (1962), the union also argues that Section 301(a) is "not to be given a narrow reading." Resp. Br. at 17; *accord* Gov. Br. at 10. Obviously, this does not provide any justification for ignoring the plain language of that section.

No doubt realizing the inadequacy of the union's approach, the government attempts to reconcile its interpretation of Section 301(a) with the language of the section. Focusing its analysis on the preposition "for," the government contends that "for" means "concerns." Gov. Br. at 11.[1] While this is obviously true, it begs the

[1] The government also asserts that a "suit for violation of contract" may be interpreted as a suit "intended to establish a legal right to engage in what otherwise would be a contractual violation." Gov. Br. at 11. It does not, however, explain how this barely intelligible interpretation can be derived from the ordinary understanding of the language of Section 301(a).

real question: the meaning of the preposition's object, the word "violation." Given the context, the most natural reading of the word "violation" is the "breach or infringement of a contractual duty."[2] Although the government's brief is less than clear on this point, it apparently interprets "violation" to encompass not only breaches of contract, but also the rights of the parties under hypothetical future circumstances. Not surprisingly, it does not even begin to explain how this awkward and strained interpretation comports with either ordinary usage of the word "violation" or the context in which that word is used in Section 301(a). Congress did not provide jurisdiction over suits concerning the "effectiveness of collective bargaining agreements" or suits "relating to" collective bargaining agreements. Moreover, this Court has "never intimated that any action merely relating to a contract within the coverage of § 301 arises exclusively under that section." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1983).

In short, the meaning of Section 301(a) is plain, and no further judicial inquiry is necessary.

2. Unable to find any plausible support in the language of Section 301(a), both the union and the United States rely primarily upon the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, as expanding the jurisdiction of the federal courts to cover suits to invalidate collective bargaining agreements. *See* Resp. Br. at 18-24; Gov. Br. at 10-17. This reliance is misplaced. The Declaratory Judgment Act simply authorizes declaratory relief in cases "within [the] jurisdiction" of the federal courts. 28 U.S.C. § 2201(a). It has therefore long been settled that the Act "enlarged the range of remedies available in federal courts but did not extend their jurisdiction." *Skelly Oil Co. v. Phillips*

[2] *See, e.g., Black's Law Dictionary* 1408 (5th ed. 1979) (defining "violation" as a "breach of right, duty or law"); XIX *Oxford English Dictionary* 653 (2d ed. 1989) ("Infringement or breach"); *The Random House Dictionary of the English Language* 1594 (1973) ("a breach, infringement, or transgression as of a law, rule, or promise"); *Webster's Third New International Dictionary of the English Language* 2554 (1986) (synonymous with breach; "an infringement or transgression").

Petroleum Co., 339 U.S. 667, 671 (1950). The "operation of the Declaratory Judgment Act is procedural only," *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937), and the subject matter jurisdiction of the federal courts "was not altered by the Declaratory Judgment Act." *Skelly Oil*, 339 U.S. at 671.

Federal jurisdiction cannot be based upon the federal nature of the defense raised by the union. It is well-settled under the well-pleaded complaint rule that federal jurisdiction cannot be based upon the federal nature of a defense to a coercive action. *See, e.g., Gully v. First Nat'l Bank*, 299 U.S. 109, 115-18 (1936); *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 152-54 (1908). As a consequence, federal jurisdiction over declaratory actions seeking to raise federal defenses cannot exist unless, at a minimum, there would be federal jurisdiction over the corresponding coercive action. *See Franchise Tax Bd.*, 463 U.S. at 16; *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 248 (1952); *Skelly Oil*, 339 U.S. at 672.

The union and the government contend that this Court has jurisdiction over the union's request for declaratory relief because it would have had jurisdiction over a coercive suit petitioner might have brought "[h]ad the UAW in fact announced its intention to strike over the subcontracting dispute that is at the core of this lawsuit." Resp. Br. at 20; *see* Gov. Br. at 13-15. But just as the union cannot sue under Section 301(a) in the absence of an alleged violation, petitioner also could not have brought suit under Section 301(a) until there was an alleged breach. This Court has never suggested that jurisdiction over a declaratory judgment action can be based upon a lawsuit that cannot be filed. The most that it has said is that, where a request for declaratory relief "seeks in essence to assert a defense to an impending or threatened action, it is the character of the threatened action, and not of the defense, which will determine whether there is [federal] jurisdiction." *Wycoff Co.*, 344 U.S. at 248. Here, there is no federal jurisdiction over the supposedly threatened action because the essential element of a violation is lacking, and neither the union nor the government even begins to explain how the Declaratory Judgment Act could confer federal jurisdiction based upon an action that *might* become cognizable in federal court sometime in the future.

Moreover, even if there had been a violation and petitioner could have brought an enforcement action in federal court, there would still have been no jurisdiction over the union's suit. The rule that jurisdiction in a Declaratory Judgment Act case can be based upon the coercive action the declaratory defendant could have brought was formulated in cases invoking federal question jurisdiction. *See Wycoff*, 344 U.S. at 248; *Skelly Oil*, 339 U.S. at 671-74. Federal question jurisdiction is not, however, limited to coercive suits. It applies to "all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. As a consequence, it makes no difference for purposes of federal question jurisdiction whether a coercive suit is filed: the only relevant factor is the applicable law. Section 301(a) does not, however, grant jurisdiction over all cases arising out of labor contracts; it restricts jurisdiction to suits "for violation of contract." 29 U.S.C. § 185(a). The Declaratory Judgment Act cannot be used to make an end run around this restriction upon the jurisdiction of the federal courts.

This principle was recognized by this Court in *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, a case upon which the opposing parties curiously rely. *See* Resp. Br. at 24; Gov. Br. at 12. In *Franchise Tax Board*, a state taxing agency sued in state court seeking, among other things, a declaration that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, did not preclude the state agency from imposing a tax levy upon a taxpayer's benefits in an ERISA-covered welfare benefits plan. When the defendant tried to remove the case, the state agency objected that there was no federal jurisdiction, thereby raising the question whether the state agency could have sought declaratory relief in federal court. *See Franchise Tax Bd.*, 463 U.S. at 19 & n.18. Even though the defendant in *Franchise Tax Board* might have sought an injunction in federal court against the tax levy under ERISA, *see id.* at 19-20, this Court held that the state agency could not have sought declaratory relief in federal court based, in part, upon the specific restrictions in the jurisdictional statute in question in that case. *See id.* at 21-22.

Like Section 301(a), the statute at issue in *Franchise Tax Board* did not simply confer jurisdiction over all cases arising under a certain area

of the law. It provided that civil actions could be brought "by a participant, beneficiary or fiduciary" to enjoin violations of ERISA and to enforce the statute. 29 U.S.C. § 1132(a)(3). After noting that the state agency had other means of enforcing its laws, this Court observed that "[t]he express grant of federal jurisdiction in ERISA is limited to suits brought by certain parties . . . as to whom Congress presumably determined that a right to enter federal court was necessary to the statute's purpose." *Franchise Tax Bd.*, 463 U.S. at 21. In addition, this Court noted, Congress did not "go so far as to provide that any suit *against* such parties must also be brought in federal court." *Id.* This Court therefore concluded that the state agency's request for declaratory relief was "not within the original jurisdiction of the United States district courts." *Id.* at 22. So here, Section 301 grants jurisdiction only over suits for violation of labor contracts. This is not such a suit, and the Declaratory Judgment Act confers no right to bring a declaratory action.

In other contexts, this Court has similarly held that declaratory relief may not be used to circumvent restrictions upon federal jurisdiction. The application of the well-pleaded complaint rule to requests for declaratory relief reflects this principle. *See supra* p. 4. Similarly, this Court has held that requests for declaratory relief may not be used to evade restrictions imposed upon federal jurisdiction by the Eleventh Amendment (*see Green v. Mansour*, 474 U.S. 64, 73 (1985)) or by principles of federalism (*see Samuels v. Mackell*, 401 U.S. 66, 69-73 (1971)). There is similarly no reason to permit evasion of the restrictions imposed by Section 301(a) through the use of declaratory relief.

Both the union and the United States find support for their position in *Franchise Tax Board*'s brief mention of the Second Circuit's decision in *Black-Clawson Co. v. International Association of Machinists Lodge 335*, 313 F.2d 179 (2d Cir. 1962). *See* Resp. Br. at 24; Gov. Br. at 12. This Court merely observed in a footnote that *Black-Clawson* held that a "suit by [an] employer for declaratory judgment as to contract obligations arises under § 301." *Franchise Tax Bd.*, 463 U.S. at 25 n.28. There was no suggestion that a declaratory judgment can be sought *before* any alleged violation of contractual obligations or to invalidate a collective bargaining

agreement. Indeed, in *Black-Clawson* an employer sought a declaration concerning its refusal to arbitrate, which the union contended was a contract violation. *See* 313 F.2d at 180-81. Moreover, as noted earlier (*see supra* p. 3), immediately after describing *Black-Clawson*, this Court observed that "even under § 301 we have never intimated that any action merely relating to a contract within the coverage of § 301 arises exclusively under that section." *Franchise Tax Bd.*, 463 U.S. at 25 n.28.

3. The government asserts that suits seeking to invalidate collective bargaining agreements are "necessary to ensure consistent application of the federal substantive law of collective bargaining agreements." Gov. Br. at 17. The union also contends that federal jurisdiction over suits such as this one "ineluctably follows" from the "comprehensive federal common law of [labor] contracts" formulated under Section 301(a). Resp. Br. at 15. These arguments are without merit.

The absence of federal jurisdiction over suits to invalidate labor contracts does not pose any threat to the comprehensiveness of federal labor law. Where there is no federal court jurisdiction, parties are simply remitted to the National Labor Relations Board, the agency to which "Congress has entrusted administration of labor policy for the Nation." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). Furthermore, far from promoting consistent application of the law, permitting suits in federal court to invalidate collective bargaining agreements would undermine that goal. As the union concedes, the federal common law of collective bargaining reflects the policies formulated and applied by the Board. *See* Resp. Br. at 27-28. Federal common law is "fashion[ed] from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456. Indeed, *Lincoln Mills* states that the "Labor-Management Relations Act, [29 U.S.C. § 141 *et seq.*,] expressly furnishes some substantive law." *Id.* at 457. Moreover, one of the Board's primary functions is "to oversee and referee the process of collective bargaining." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 107-08 (1970). As the Board is the primary expositor of federal labor policy, where matters within the Board's jurisdiction such as conduct during the collective bargaining process are implicated, the federal common law of collective bargaining is controlled by the policies articulated by the Board. Accordingly, the

union acknowledges that "courts in exercising § 301 jurisdiction must take account of the NLRA rules governing the bargaining process" and "be guided by any NLRB decisions bearing on the conduct in issue." Resp. Br. at 27-28.

The federal policy developed by the Board will, however, be more uniformly applied if conduct during the collective bargaining process is considered by the Board rather than the courts. Indeed, as this Court recognized long ago, exclusive Board jurisdiction is generally "necessary to obtain uniform application of its substantive rules." *Garner v. Teamsters Local No. 776*, 346 U.S. 485, 490 (1953). Permitting courts to consider claims of fraud in the inducement and other misconduct during the collective bargaining process governed by Board policy would therefore tend not to promote, but to undermine consistent application of federal labor law.

The government recognizes the danger of conflict and inconsistency created by suits to invalidate collective bargaining agreements. It acknowledges that Section 301(a) should not be interpreted "to authorize a suit asserting a statutory claim that Congress has committed to the Board's primary jurisdiction, with contractual issues only tangentially involved." Gov. Br. at 26. The government does not, however, explain why this suit, which focuses upon a controversy within the Board's jurisdiction and in which the interpretation of a collective bargaining agreement is only tangentially involved, does not fall within the Board's purview. Nor, for that matter, does it offer any clue as to where to draw the line between disputes that are exclusively for the Board to decide and those that are not. *See id.* at 27 n.20.

4. The union and the government urge, however, that the union's fraud-in-the-inducement defense could be litigated in a suit by petitioner for breach of the agreement and that there is "no basis for precluding declaratory relief in a suit between the very same parties who would litigate an enforcement action." Resp. Br. at 24 (citation omitted). In fact, there is a compelling reason for doing so. As petitioner explained in its initial brief, *see* Pet. Br. at 26-31, when suits are brought to enforce collective bargaining agreements, contractual defenses such as fraud in the inducement must be considered out of necessity. If such defenses were ignored, the courts

would be placed in the untenable position of enforcing illegal, inequitable, and otherwise unenforceable agreements. *See, e.g., Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-86 (1982). By contrast, where as here, a contractual defense is raised in a declaratory posture, there is no such necessity. Notably absent from the briefs of the union and the United States is any objection to this simple and persuasive explanation.

5. The union argues that suits seeking to invalidate collective bargaining agreements must be permitted in order to ensure a "neutral forum for the peaceful resolution of disputes" and to promote labor peace. Resp. Br. at 19 (quotation omitted); *see* Gov. Br. at 15-17. Otherwise, the argument goes, parties such as the union will be forced to strike or breach their agreements in order to resolve disputes over alleged misconduct in the collective bargaining process. *See* Resp. Br. at 7, 22; Gov. Br. at 16. This is plainly not true. As petitioner's initial brief demonstrated, the union could — and in fact did — present the dispute in this case to the Board. *See* Pet. Br. at 32-33; *see also Waymouth Farms, Inc.*, 324 N.L.R.B. No. 151, at 3 (1997) (noting the Board's power to invalidate collective bargaining agreements for fraud in the collective bargaining process).

There is also a more fundamental flaw in the union's logic. The union equates peace with the availability of a judicial forum to invalidate labor contracts. As this Court explained in the *Steelworkers Trilogy* and subsequent decisions, one of the most fundamental tenets of federal labor policy is that industrial peace is best achieved not through court supervision, but through the collective bargaining process. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960).[3] Moreover, the most effective way to ensure peaceful, stable and lasting labor relations is by promoting a voluntary

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[3] *See also AT&T Technologies v. Communications Workers*, 475 U.S. 643, 650-51 (1986); *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 378-79 (1974); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596-97 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567-68 (1960).

and self-sustaining process of cooperation, conciliation, and informal dispute resolution. *See id.*

Suits to invalidate collective bargaining agreements undermine this policy. They seek to upset the system of industrial self-government formed by collective bargaining agreements by invalidating those agreements. And, if successful, they return to the parties the economic weapons relinquished in those agreements. To be sure, a determination of the validity of a collective bargaining agreement may be desirable before there has been a violation of the agreement. But balancing the need for fairness in the collective bargaining process and the public's interest in avoiding industrial strife is a delicate and difficult policy determination — which the Board is far better suited to make than any federal court.

It makes no difference that parties who wish to avoid Board supervision and invalidate a collective bargaining agreement can attempt to force the issue into federal court by inciting an enforcement action. The stakes in an enforcement action are much higher than in a declaratory suit because in order to incite an enforcement action the collective bargaining agreement must be breached. As a consequence, in an enforcement action, if the party seeking to invalidate does not succeed, it not only loses the cost of the litigation, but is also subject to liability for breach. This makes seeking to invalidate a collective bargaining agreement through an enforcement action far less attractive than doing so through a declaratory suit and thereby deters parties from undermining collective bargaining agreements for purely strategic advantage. As a consequence, by prohibiting anticipatory suits to invalidate collective bargaining agreements in the labor context, Section 301(a) promotes rather than undermines industrial peace and overall labor policy.

6. Both the union and the government assert that the union's claim rests upon a "traditional . . . common law of contracts rule" and that the Board has no special expertise in applying that rule. Resp. Br. at 27 (emphasis omitted); *see* Gov. Br. at 27. This argument completely ignores the fact, conceded by the union (*see* Resp. Br. at 27-28), that Congress has given the Board primary jurisdiction over the collective bargaining process and that Board policy, not the "traditional common

law of contracts," dictates the obligations federal common law imposes in the context of collective bargaining.

7. The government points out that plaintiff's claim is "not coextensive" with the charges pending before the Board. Gov. Br. at 28. Proceedings before the Board are, however, never exactly the same as those that might otherwise be brought in court by a private plaintiff because the Board "acts in a public capacity to give effect to the declared public policy of the [National Labor Relations Act, 29 U.S.C. § 151 *et seq.*]," not to adjudicate private rights. *National Licorice Co. v. NLRB*, 309 U.S. 350, 362 (1940). As a consequence, the important question in determining the risk of conflict is not whether proceedings before a court are coextensive with those before the Board, but rather whether the controversy presented to the Board is the same as the one presented to the court. *See, e.g., Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 180, 196-97 (1978). Here, neither the union nor the government disputes that "a claim of fraud based upon a[n] alleged failure to disclose information during the collective bargaining process is essentially indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB." Pet. Br. at 33 (quotation omitted). Thus, the risk of conflict is clear.

8. The government asserts that there is no inconsistency between the declaratory relief sought by the union and the tentative settlement agreement between petitioner and the Board. *See* Gov. Br. at 29. The General Counsel of the Board declined, however, to seek the very remedy that the union requests in this proceeding. *See* Pet. Br. at 5-6, 33. Moreover, this Court has long recognized that "'conflict is imminent' whenever 'two separate remedies are brought to bear on the same activity.'" *Wisconsin Dep't of Indus. v. Gould*, 475 U.S. 282, 286 (1986) (quoting *Garner*, 346 U.S. at 498-99).

9. The union asserts that some agreements within Section 301 cannot be brought before the Board before a violation occurs and that petitioner's interpretation will leave parties without any declaratory remedy in some situations. *See* Resp. Br. at 25 n.13. The union does not, however, present any evidence that there are a significant number of these situations. Similarly, the government treats such cases as a

theoretical possibility, rather than a frequent occurrence. *See* Gov. Br. at 19-20, 25. As a consequence, there is no reason to think that the gap pointed out by the union poses any problem, yet alone a significant one. Moreover, even if it did, the problem would be for Congress to resolve. If Congress has left a gap in the jurisdiction of the federal courts, the responsibility for determining whether to fill that gap is Congress', not this Court's.

10. The union apparently misunderstands the significance of petitioner's alternative argument that the union's claim is for fraud. *See* Pet. Br. at 34-38. The union argues that the validity of the union's request for damages does not fall within the scope of the question presented. *See* Resp. Br. at 10-12 & n.4. Petitioner's point was, however, that the request for damages reveals the true nature of the union's claim. The complaint in this case contains only one count. J.A. 16-19. The relief sought by the union demonstrates that this count sounds in tort, not contract. Moreover, nothing in the union's brief suggests otherwise. To the contrary, it admits that its claim is at least in part a tort claim. *See* Resp. Br. at 10 n.4. Finally, the opposing parties neither contest that *Garmon* preemption applies to tort claims for fraud nor suggest that Section 301(a) protects such claims from preemption.

11. In any event, even if the union's claim were a contract claim, *Garmon* would still apply to this suit to invalidate a collective bargaining agreement. The union and the United States assert that, if the union's claim falls within Section 301(a), it is necessarily exempt from preemption under *Garmon*. *See* Resp. Br. at 25-27; Gov. Br. at 9. This Court has not, however, applied the *Smith v. Evening News* exception in the absence of an alleged contractual violation, and it has specifically reserved the question whether that exception covers all actions under Section 301(a). *See Smith v. Evening News*, 371 U.S. at 197-98. Moreover, neither the union nor the government has suggested any reason to extend the exception to cover this case.

There are, by contrast, powerful reasons why the *Smith v. Evening News* exception should not be extended to cover this case. Congress consciously chose not to permit the National Labor Relations Board to enforce collective bargaining agreements. Given the Board's broad

power over the collective bargaining process, Congress feared that conferring upon the Board "generalized power to determine the rights of parties under all collective bargaining agreements" would give it too much power and lead to "government regulation of the terms of those agreements." Pet. Br. at 17-18 (quotation omitted). Congress therefore left the enforcement of collective bargaining agreements to the "usual processes of the law." *Id.* at 17 (quotation omitted). By ensuring that enforcement actions can always be brought in federal court despite any overlap with Board jurisdiction, the *Smith v. Evening News* exception furthers this "strong policy favoring judicial enforcement of collective bargaining contracts." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976). It also reflects the congressional determination that "courts are fully competent to resolve labor relations disputes through focusing on the terms of a collective bargaining agreement." *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300 (1971). However, where as here, the parties do not seek to enforce a collective bargaining agreement, and there is no question concerning the interpretation of an agreement, the policies underlying the *Smith v. Evening News* exception are inapplicable, and there is no reason to risk intrusion upon the Board's generally exclusive jurisdiction.

If the position of the opposing parties were adopted — and state and federal courts were permitted to adjudicate conduct that constitutes an unfair labor practice (*see supra* p. 11) — those courts would effectively be given jurisdiction to affirmatively enforce the National Labor Relations Act. Congress, however, committed that task exclusively to the National Labor Relations Board. As this Court has clearly stated, despite the authority of the courts to adjudicate defenses arising under federal labor law, "only the Board may provide affirmative remedies for unfair labor practices." *Kaiser Steel Corp.* 455 U.S. at 86. Moreover, in those limited circumstances where Congress has determined that courts should be permitted to remedy unfair labor practices, it has said so explicitly. *See* 29 U.S.C.

§§ 164(c)(2), 187.[4] There is not, and cannot be, any claim that Congress has explicitly conferred such affirmative jurisdiction on the courts in cases such as this one involving misconduct during the collective bargaining process, and it should not be implied. Rather, the *Garmon* doctrine requires that the Board be given exclusive jurisdiction to grant such affirmative relief.

In sum, both the plain language of Section 301(a) and the federal labor policies underlying in the *Garmon* preemption doctrine lead to the same conclusion: suits such as the union's seeking to invalidate collective bargaining agreements cannot be brought in federal court.[5]

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[4] In Section 303 of the LMRA, Congress authorized individuals "injured in [their] business or property" by reason of certain unfair labor practices to sue in federal court for "damages by [them] sustained and the costs of the suit." 29 U.S.C. § 187. Congress also provided that, where the Board has declined to exercise jurisdiction over a class of labor disputes, state courts and administrative agencies are free to exercise jurisdiction over those disputes. *See id.* § 164(c).

[5] Petitioner agrees that the expiration of the 1994 collective bargaining agreement between the parties does not moot the question presented. Should the union prevail on appeal, the lower courts would be forced to address the union's claim for damages. In addition, declaring the agreement void would raise questions concerning rights that may have vested under the agreement. *See, e.g., Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 209-10 (1991) (discussing vesting).

CONCLUSION

For the foregoing reasons, and those stated in petitioner's initial brief, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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